



CONFEDERATED TRIBES  
of the  
*Umatilla Indian Reservation*

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March 28, 2000

Mr. Charles Clarke  
Regional Administrator  
U. S. Environmental Protection Agency, Region 10  
1200 6th Avenue  
Seattle, WA 98101

Dear Mr. Clarke:

On behalf of the Board of Trustees (BOT) of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), I would like to thank you for meeting with us on March 28, 2000. We very much appreciate the opportunity to discuss with you in a government-to-government context matters of great mutual interest regarding salmon recovery and the protection and enhancement of environmental and human health in the Northwest.

In this letter we will describe in some detail some of our concerns and questions about the following topics:

1. Portland Harbor
2. Lower Snake River Juvenile Salmon Migration Feasibility Report/Environmental Impact Statement
3. All H Paper
4. Clean Water Act Enforcement
  - a. Corps' Capital Construction Priorities/Budget
  - b. Potlatch Discharge Permit
5. Interior Columbia Basin Ecosystem Management Project
6. CTUIR TMDL
7. Tribal Funding
  - a. General
  - b. Fish Consumption/Fish Tissue Study

## 1. Portland Harbor

Problems with Portland Harbor are serious and complex. Contaminants from the site pose threats to water quality, fish, wildlife, and the people who use and enjoy these resources, including tribal members. The CTUIR has identified the following issues related to Portland Harbor:

- Impacts of the proposed cleanup measures, including dredging, on fish, wildlife and their habitat;
- Promotion of natural resource restoration efforts;
- Protection of Treaty-reserved rights and interests in salmon and wildlife, as well as water quality;
- Protection of tribal members from toxics and other pollution, either from salmon consumption or via other routes; and
- Ensuring fulfillment of EPA's Trust Responsibility to the CTUIR.

A series of meetings with various parties over many months has failed to answer all of the questions we have about the Portland Harbor situation. In the event of state-led cleanup, we are concerned about:

- The nature of the Trust Responsibility;
- The nature of available legal remedies if there are conflicts with the state;
- The nature of tribal involvement, which apparently would entail advisory group participation and not direct consultation; and
- The nature of EPA funding and participation in cleanup.

These issues remain unresolved, and thus deferring listing continues to be problematic. The CTUIR is interested in hearing EPA's views on the following:

- The role of the CTUIR and other tribes;
- EPA's role in funding or other assistance for tribal participation in Portland Harbor cleanup;
- How EPA intends to meet its Trust Responsibility to the CTUIR;
- Progress made by the state in the deferral process (Whether EPA holds the same views now as it did five months ago, when it sent a letter to the Oregon Department of Environmental Quality outlining deficiencies in the state proposal in meeting deferral criteria);
- Whether EPA would go forward with deferral if there is an "11th-hour" tolling agreement reached before March 31<sup>1</sup>;
- The potential that EPA may direct the responsible parties paying for cleanup to fund tribal involvement, and if so, what such funding would be used for<sup>2</sup>;

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<sup>1</sup> There has been little or no progress to date in meeting the Natural Resource Trustees' requirements for a tolling agreement. The tribes have been waiting for a decision on listing for over six months; the lack of progress suggests that there will be no deferral. If this is not the case, we need to know now.

<sup>2</sup> EPA staff have indicated that this may be a possibility. So far, funding for tribal participation offered by ODEQ is restricted to projects they are working on, and not other processes the tribes may view as necessary. Any agreements with the state must provide tribes the discretion to use funding as they see



- Whether deferral is still a possibility, given the information EPA has now<sup>3</sup>; and
- In the event of a listing, whether the CTUIR will have a voice in revising any of the plans that have been developed so far, that may not have adequately addressed tribal concerns.<sup>4</sup>

In summary, the CTUIR's principal concerns regarding Portland Harbor are ensuring:

- Effective, timely cleanup of the site that adequately protects people, salmon and other natural and cultural resources in which the CTUIR retains rights and interests;
- Protection and preservation of the legal and other rights and interests of the CTUIR; and
- Fulfillment of EPA's Trust Responsibility to the CTUIR to carry out the above two items.

So far, the CTUIR remains unconvinced that deferral of cleanup to the State of Oregon will satisfy any of these three items.

## **2. Lower Snake River Juvenile Salmon Migration Feasibility Report/Environmental Impact Statement**

Preliminary reviews by CTUIR staff, CRITFC staff, and others indicate that there are substantial flaws in the Corps' Draft Lower Snake River Juvenile Salmon Migration Feasibility Report/Environmental Impact Statement (FR/EIS), analyzing whether or not to breach the four Lower Snake River dams. Among other things, it appears to:

- Overestimate the costs and other negative impacts of breaching and underestimate the benefits;
- Inaccurately portray the costs and benefits of non-breaching options;

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fit, as well as provide some form of dispute resolution. This is only possible with a tri-party memorandum of agreement between ODEQ, the tribes and EPA.

<sup>3</sup> We are aware of the political pressure surrounding this issue. The biggest impediment to deferral has been the polluters' failure to reach tolling agreements with the Natural Resource Trustees. Tribal involvement is only one of the elements required for deferral. Other elements include: a CERCLA-equivalent remedial investigation/feasibility study (RI/FS) on how cleanup is to occur; an enforcement strategy to implement the cleanup plan; preservation of the Natural Resource Trustees' interests; and community involvement. To date, ODEQ has not made significant process in the development of the RI/FS.

<sup>4</sup> The tribes have concerns about the work done to date on cleanup plans. It wasn't until mid-February that there was any proposal for funding tribal staff involvement in developing the RI/FS, the work plan, or the initial Sediment Management Plan. Because funding for tribal involvement was proposed late in the process, the CTUIR was unable to devote sufficient resources to deal with the voluminous reports and documents generated on Portland Harbor. Our concern is that once the site is listed, we may be bound by the work that has been done. Staff from other tribes have reviewed the RI/FS and found it to be well done; the concern here is that the state still evidently is reluctant to recognize that the tribes have Treaty-secured and -protected interests in the Willamette River and elsewhere.

- Inadequately recognize the need to comply with the Treaty of 1855 and fulfill the federal government's Trust Responsibility to the CTUIR; and
- Of particular interest to EPA, the FR/EIS appears to pay insufficient attention to the mandates of the federal Clean Water Act (CWA) and the costs of meeting them.

The federal government must protect and restore salmon and their habitat, not merely to the point where salmon are no longer listed under the Endangered Species Act (ESA), but to provide sustainable, harvestable salmon populations and healthy salmon habitat within a reasonable period of time. The CTUIR appreciates EPA's efforts to emphasize the CWA and other authorities to benefit salmon and their habitat in the Corps' FR/EIS process, and encourages EPA to continue to do so.

### **3. All H Paper**

The "All H" Process and the resulting "Paper" is the product of the "Federal Caucus" (9 federal agencies, including EPA). The All H Paper purports to examine all sources of salmon mortality and address them comprehensively, much like the CTUIR and the Ciolumbia River Inter-Tribal Fish Commission (CRITFC) did five years ago, in the CTUIR's *Columbia Basin Salmon Policy* and CRITFC's *Wy-Kan-Ush-Mi Wa-Kish-Wit* ("Spirit of the Salmon").

The All H Paper focuses on preventing extinction, defined as one fish. In other words, extinction is prevented and success is achieved if you have as few as two fish returning. Compliance with Treaty Rights and providing sustainable, harvestable salmon populations and healthy salmon habitat do not appear to be factors in the All H Paper.

Like the Corps' FR/EIS, the CTUIR encourages EPA to advocate for salmon recovery measures that help fulfill Treaty Rights and Clean Water Act requirements in the All H Process and in all federal government planning processes affecting salmon.

### **4. Clean Water Act Enforcement**

Poor habitat, including high temperatures and dissolved gas levels in the mainstem and the tributaries, is one cause of salmon declines. Dams have degraded habitat, contributing to water quality violations like high temperatures. Breaching the four Lower Snake River dams would help; modifying other dams could also help.

#### **a. Corps' Capital Construction Priorities/Budget**

In its annual Capital Construction Budget, the Corps routinely puts insufficient emphasis on measures to help improve water quality and other habitat conditions. CRITFC staff have developed a priority list and budget for such measures, in contrast to the Corps'.

The CTUIR encourages EPA to advocate for Corps Capital Construction priorities and budgets that include effective, aggressive projects and measures that reduce water quality problems like high temperatures and dissolved gas. The Corps' priorities and budgets should de-emphasize overly-technological, ultimately unsuccessful recovery methods like barging and trucking juvenile fish.



**b. Potlatch Discharge Permit**

The Potlatch mill in Lewiston, Idaho, discharges pollutants, including toxics and high-temperature water, into the Snake River that are harmful to salmon. They are involved in a permitting process with EPA regulating this activity.

The CTUIR encourages EPA to take a strong stand in the permitting process for Potlatch that minimizes discharges of toxics and hot water, and recognizes the higher-than-average fish consumption levels of tribal members.

**5. Interior Columbia Basin Ecosystem Management Project**

The Interior Columbia Basin Ecosystem Management Project (ICBEMP) is the federal land management planning process that will affect Forest Service and Bureau of Land Management lands throughout the Interior Northwest, including significant salmon habitat.

The CTUIR encourages EPA, as a member of the Federal Caucus, to advocate for Clean Water Act compliance and fulfillment of Treaty Rights (including protection and restoration of sustainable, harvestable salmon populations and healthy salmon habitat within a reasonable period of time), as essential criteria for ICBEMP.

**6. CTUIR TMDL**

The CTUIR has developed a TMDL ("Total Maximum Daily Load") that will better manage pollution problems in the Umatilla River on the reservation. However, the CTUIR's water quality standards have not yet been approved by EPA.

The CTUIR would like to know how, or if, EPA will approve the CTUIR's TMDL if our water quality standards remain to be approved. Will EPA issue approval according to federal water quality standards in the interim, and then under the tribe's standards once they are approved? As a major jurisdictional issue with significant implications for our sovereignty, the CTUIR does not want approval according to state water quality standards. The CTUIR is interested in hearing about what options EPA may be considering. The CTUIR also hopes that EPA will be able to approve the tribal water quality standards relatively quickly; they are virtually the same as Oregon's and the Warm Springs tribe's, which have already been approved.

**7. Tribal Funding**

**a. General**

The CTUIR deeply appreciates funds that EPA and other agencies have made available that have assisted us in carrying out valuable government services. However, some programs (like GAP) have been stretched quite thin recently, jeopardizing some necessary tribal functions.

The CTUIR encourages EPA to advocate for secure, stable funding for tribal programs at levels that allow the CTUIR to continue to conduct actions and activities vital to the welfare of our members, as part of EPA's Trust Responsibility to the CTUIR.

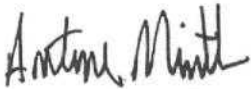
**b. Fish Consumption/Fish Tissue Study**

The CTUIR, CRITFC, EPA and others have been involved in an ongoing study of tribal fish consumption levels and fish tissue contamination. The consumption portion is completed, but more work needs to be done on the fish tissue portion. However, future funding is unclear.

The CTUIR appreciates EPA's contributions to the study so far, and encourages EPA to support the completion of the Fish Tissue Study through adequate funding and to continue to work with the CTUIR and CRITFC on its completion.

Thank you again for visiting us. We look forward to further productive discussions on the above matters, as well as others, in the future, as we work together to address the many issues significantly affecting the health and well-being of the people of our shared region.

Sincerely,



Antone C. Minthorn  
Chairman  
Board of Trustees

AM: DNR: cm/ah